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8 **United States District Court**
9 **Central District of California**
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11 DWAIN LAMMEY,

12 Plaintiff,

13 v.

14 STARBUCKS CORPORATION, a
15 Washington Corporation; and Does 1-10,

16 Defendants,
17

Case № 2:18-cv-10017-ODW (GJSx)

**ORDER GRANTING
DEFENDANT’S MOTION FOR
SUMMARY JUDGMENT [39] AND
DENYING PLAINTIFF’S MOTION
FOR SUMMARY JUDGMENT [41]**

18 **I. INTRODUCTION**

19 Plaintiff Dwain Lammey alleges the sales counter at Defendant Starbucks
20 Corporation’s coffee shop violates the Americans with Disabilities Act (“ADA”) and
21 the Unruh Civil Rights Act (“UCRA”). (Compl. ¶¶ 21–31, ECF No. 1.) Both parties
22 move for summary judgment. (Starbucks Mot., ECF No. 39; Lammey Mot., ECF
23 No. 41.) The Motions are fully briefed. (See Opp’n Lammey Mot., ECF No. 46; Opp’n
24 Starbucks Mot., ECF No. 48; Reply Starbucks Mot., ECF No. 50; Reply Lammey Mot.,
25 ECF No. 51.) For the following reasons, Starbucks’s Motion is **GRANTED**, and
26 Lammey’s Motion is **DENIED**.¹
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28 ¹ After carefully considering the papers filed in connection with the Motions, the Court deemed the
matters appropriate for decision without oral argument. Fed. R. Civ. P. 78; C.D. Cal. L.R. 7-15.

II. BACKGROUND

Lammey uses a wheelchair for mobility. (Pl.’s Statement of Uncontroverted Facts (“PSUF”) ¶ 1, ECF No. 41-2.) On October 24, 2018, Lammey visited Starbucks’s coffee shop located at 1850 West Slauson Avenue in Los Angeles, California (the “Shop”), to “shop and to assess it for compliance with access laws.” (PSUF ¶ 5; Def.’s Statement of Uncontroverted Facts (“DSUF”) ¶ 1, ECF No. 39-2.) It is undisputed that the Shop provides one continuous transaction counter for use by all customers (the “Counter”), and the approach to the Counter is a parallel approach. (Pl.’s Resp. to DSUF ¶¶ 3, 6, ECF No. 48-1.) It is also undisputed that the Counter is less than 36 inches in height *and* less than 36 inches in length. (Pl.’s Resp. to DSUF ¶¶ 3–4.) After assessing the premises, Lammey initiated this action against Starbucks, alleging that the Counter violates the ADA and the UCRA. (Compl. ¶¶ 21–31.)

III. LEGAL STANDARD

A court “shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). The burden of establishing the absence of a genuine issue of material fact lies with the moving party, *see Celotex Corp. v. Catrett*, 477 U.S. 317, 322–23 (1986), and the court must view the facts and draw reasonable inferences in the light most favorable to the nonmoving party, *Scott v. Harris*, 550 U.S. 372, 378 (2007). A disputed fact is “material” where the resolution of that fact might affect the outcome of the suit under the governing law, and the dispute is “genuine” where “the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). Conclusory or speculative testimony in affidavits is insufficient to raise genuine issues of fact and defeat summary judgment. *Thornhill Publ’g Co. v. GTE Corp.*, 594 F.2d 730, 738 (9th Cir. 1979). The court may not weigh conflicting evidence or make credibility determinations, but there must be more than a mere scintilla of contradictory evidence to survive summary judgment. *Addisu v. Fred Meyer, Inc.*, 198 F.3d 1130, 1134 (9th Cir. 2000).

1 that “(1) she is disabled within the meaning of the ADA; (2) the defendant is a private
 2 entity that owns, leases, or operates a place of public accommodation”; and (3) the
 3 defendant denied public accommodation to the plaintiff because of her disability.
 4 *Molski v. M.J. Cable, Inc.*, 481 F.3d 724, 730 (9th Cir. 2007). “The third element . . . is
 5 met if there was a violation of applicable accessibility standards.” *Moeller v. Taco Bell*
 6 *Corp.*, 816 F. Supp. 2d 831, 847 (N.D. Cal 2011); *see Chapman v. Pier 1 Imports (U.S.)*
 7 *Inc.*, 631 F.3d 939, 945 (9th Cir. 2011) (en banc).

8 Lammey argues that the Counter violates the ADA because it is so “cluttered”
 9 that it violates 28 C.F.R. § 36.211(a). That regulation requires places of public
 10 accommodation to “maintain in operable working condition those features of facilities
 11 and equipment that are required to be readily accessible to and usable by persons with
 12 disabilities” 28 C.F.R. § 36.211(a). Specifically, Lammey cites section 904.4.1 of
 13 the 2010 ADA Standards for Accessible Design (“2010 Standards”) to argue that “where
 14 the approach to the sales or service counter is a parallel approach, such as in this case,
 15 there must be a portion of the sales counter that is . . . 36 inches in width that extends
 16 the same depth as the rest of the sales or service counter top.” (Lammey Mot. 7–8, 12
 17 (citing 36 C.F.R. Pt. 1191, App’x D § 904.4.1).)² Starbucks, on the other hand, argues
 18 that it is not required “to maintain a 36[-inch] length of clear accessible counter,” or
 19 even any counter at all, and therefore, its countertop merchandise and displays do not
 20 violate the ADA. (Starbucks Mot. 11–13.) Starbucks is correct.

21 “Section 904.4.1 of the 2010 Standards expressly contemplates counters that are
 22 built to be less than 36 inches long.” *Johnson v. Starbucks Corp.*, 818 F. App’x 657,
 23 659 (9th Cir. 2020); *Kong v. Mana Inv. Co., LLC*, 818 F. App’x 660, 663 (9th Cir. 2020);
 24 *Lindsay v. Starbucks Corp.*, 815 F. App’x 152, 154 (9th Cir. 2020). Consequently, the
 25 Ninth Circuit has held that § 36.211(a) does not require Starbucks to “maintain” 36
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27
 28 ² However, Lammey also concedes that the Counter does not violate “the technical standards found in
 Section 904.4.1.” (Lammey Mot. 7.)

1 inches of usable counter space. *Johnson*, 818 F. App'x at 659–60; *Kong*, 818 F. App'x
2 at 663; *Lindsay*, 815 F. App'x at 154.

3 Here, the Counter is of a uniform height, less than 36 inches tall. (Pl.'s Resp. to
4 DSUF ¶ 3.) Thus, despite Lammey's arguments to the contrary, Starbucks is not
5 required to maintain 36 inches (in length) of usable counter space. *See, e.g., Johnson*,
6 818 F. App'x at 660. Moreover, the ADA does not require public accommodations to
7 provide transaction counters at all. Rather, the 2010 Standards instruct: "*Where*
8 *provided*, at least one type of sale counter and service counter shall comply with 904.4."
9 36 C.F.R. Pt. 1191, App'x C § 227.3 (emphasis added). Because the guidelines
10 contemplate that no counter might be provided at all, and because there is no length
11 requirement under § 904.4.1 (or otherwise) for counters that are uniformly less than
12 36 inches tall, Lammey cannot prevail on his ADA claim. As a matter of law,
13 "Starbucks'[s] obligation to maintain the transaction counter in operable working
14 condition [does not] demand[] any particular length of clear space for customer use."
15 *Kong v. Mana Inv. Co.*, No. SA CV 18-01615-DOC (DFM), 2019 WL 3220027, at *4
16 (C.D. Cal. May 1, 2019), *aff'd*, *Kong*, 818 F. App'x at 663.³

17 In short, there is no maintenance requirement where there is no counter
18 requirement. "[M]aintenance requirements cannot be more stringent than the building
19 requirements." *Johnson*, 818 F. App'x at 660; *Kong*, 818 F. App'x at 663; *Lindsay*,
20 815 F. App'x at 155; *accord Lammey v. Starbucks Corp.*, No. CV 18-9972-JFW(ASx),
21 2020 U.S. Dist. LEXIS 239344, at *7–14 (C.D. Cal. Dec. 15, 2020); *Arroyo v. Baseline*
22 *Enter. LLC*, No. CV 19-10641-DFM, 2020 WL 6438412, at *4–5 (C.D. Cal. Oct. 19,
23 2020). Lammey's ADA claim fails as a matter of law, and summary judgment in favor
24 of Starbucks is appropriate.

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26 ³ The Court also notes that Lammey does not provide any evidence that Starbucks's merchandise or
27 displays actually hindered his use of the Counter, or that his access to clear counter space differed from
28 that of any other customers. To the contrary, Lammey provides evidence that he successfully
purchased a gift card despite the cluttered Counter. (Lammey Mot., Ex. 2, ECF No. 41-5.)

1 **B. UCRA Claim**

2 LammeY also asserts a claim under the UCRA based on the alleged ADA
3 violation. (Compl. ¶¶ 28–31.) While a plaintiff may maintain an independent UCRA
4 claim by alleging intentional discrimination, LammeY does not make such an argument
5 here. (See LammeY Mot. 15.) Because LammeY’s UCRA claim rises and falls with his
6 ADA claim, his UCRA claim fails as well. *See, e.g., LammeY v. Starbucks Corp.*,
7 2020 U.S. Dist. LEXIS 239344, at *17; *Cooper v. Wal-Mart Real Estate Bus. Tr.*,
8 No. EDCV 19-238 JGB (SPx), 2020 WL 3881604, at *5 (C.D. Cal. Apr. 3, 2020).
9 Summary judgment is likewise appropriate in favor of Starbucks on this claim

10 **V. CONCLUSION**

11 For the aforementioned reasons, Starbucks’s Motion for Summary Judgment is
12 **GRANTED**, (ECF No. 39), and LammeY’s Motion for Summary Judgment is
13 **DENIED**, (ECF No. 41). The Court will issue Judgment.

14
15 **IT IS SO ORDERED.**

16
17 April 26, 2021



18 **OTIS D. WRIGHT, II**
19 **UNITED STATES DISTRICT JUDGE**